

REMARKS

Claims 18-24 and 26-60 are pending in this application.

Claims 26-31, 35-56, 59 and 60 have been rejected under 35 USC 102(b) as anticipated by Humes.

Claims 18-24 been rejected under 35 USC 103(a) as obvious over Humes in view of Kleshinski.

Claims 32-34, 57 and 58 have been rejected under 35 USC 103(a) as obvious over Humes in view of Leong.

With this response, claims 18, 24, 26 and 33 have been amended, and claims 32, 34-38 and 42-60 have been canceled as either redundant or to expedite prosecution of this case. After entering the amendments identified herein, claims 18-24, 26-31, 33, and 39-41 will be pending.

Response to the Prior Art Rejections

To expedite prosecution of this application, applicant hereby amends independent claims 18 and 26 to further patentably distinguish over the prior art of record. The Final action rejects previously presented claim 24 as obvious over Humes and Kleshinski, even though neither references discloses “a spongy material” or “a swellable pellet.” Leong is cited against claims 32-34, 57 and 58 as disclosing a “spongy material.” However, none of the cited references discloses an “eluting material comprising either a *swellable pellet* or a *compressible foam having a compressed delivery state and an expanded state in situ*,” as recited in amended claim 18. Similar language has been incorporated into claim 26. Support for this recitation is provided as paragraphs [0040]-[0041] and [0051] of the published application.

In particular, paragraph [0040] states that “*pellet 34 is sized such that it may initially be transluminally delivered into the patient's vasculature. Upon exposure to blood flow within vessel V, pellet 34 swells* so that it may contact a substantial portion of blood flowing at high velocity near the center of the vessel.” Likewise, the spongy material described with respect to FIGS. 6 also is compressible to a delivery state, as described in paragraph [0051], which states that “*[s]pongy material 20 and cage 70 collapse for delivery within sheath 52, as seen in FIG. 6C, and resiliently expand when delivered within the vasculature*, as seen in FIGS. 6A and 6B. Spongy material 20 may, for example, be

fabricated from *an expandable and porous foam* ...[and as] seen in FIG. 6E, material 20 covers a substantial portion of the patient's vessel *in the expanded configuration*...

Applicant respectfully submits that none of the prior art of record discloses the structure recited in the pending claims. Humes discusses at length that its hollow capsule contains viable cells. Plainly, any effort to compress such a capsule for transluminal delivery would have disastrous effect on the cells contained within Humes' capsule. Kleshinski does not address this shortcoming of Humes. In fact, nowhere does the Office action even suggest that Humes or Kleshinski disclose or suggest such structure.

Leong likewise does not address this critical difference between the cited art and the claimed invention. Leong is cited in the Office action as disclosing a "spongy material," which evidently means only a porous material. However, Leong could not be any clearer that the porous foam disclosed in that application is structurally *rigid, not compressible* as recited in the pending claims. See Leong at Abstract ("a *structurally rigid* biodegradable foam scaffold useful for cell transportation is provided"); page 3, lines 3-6 (to be useful for cell attachment and transplantation, tissue scaffolding must provide a *firm substrate*...); page 5, line 1 ("A *structurally rigid*, highly porous foam graft suitable for culture of transplanted cells seeded therein is produced ..."); page 9, lines 19-25 ("Such materials must also possess physical characteristics allowing for large surface to volume ratios, *mechanical strength and easy processing into complex shapes, such as for bone substitutes. The resulting polymeric device should also be rigid enough to maintain the desired shape under in vivo conditions*"); page 10, lines 1-2 ("The three-dimensional polymer foam provides a *sturdy scaffold* for to the transplanted cells ..."); and in the discussion of the method of making the porous foam at page 11, line 16 to page 12, line 9 ("Both methods result in *structurally rigid foams*."). See also, the discussion of Example 1 at page 14, which discusses "casting" the foam and Example 4 at page 16 and FIG. 2, wherein the foam is used to fabricate "a model of a rabbit tibia."

Inasmuch as Leong is directed to creating a rigid foam, rather than a compressible foam such as recited in the pending claims, applicant respectfully submits that it is uniquely *unfit* for use of described for applicant's claimed eluting material. Accordingly, one of ordinary skill would have learned nothing of use to the claimed invention from reading Leong, and likewise would not remotely have been motivated to replace Humes' hollow capsules containing viable cells with a compressible porous foam, for the reasons discussed above with respect to Humes, i.e., the cells would be damaged when the foam was compressed to its delivery state.

Conclusion

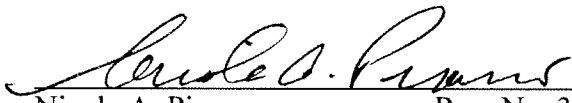
In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Please charge any required fee, or any overpayment, to Jones Day Deposit Account No. 50-3013.

If the Examiner believes it would be useful to advance prosecution, the Examiner is invited to telephone the undersigned at (858) 314-1200.

Respectfully submitted,

Date: July 1, 2009


By: Nicola A. Pisano Reg. No. 34,408

JONES DAY
222 East 41st Street
New York, New York 10017
(858) 314-1200